

member is Southeastern Grocers, Inc. f/k/a Southeastern Grocers, LLC. Southeastern Grocers, Inc. is incorporated in the State of Delaware with its principal place of business in the State of Florida.

The action has been brought by the Plaintiff against the Defendant for the alleged accident which occurred in Greenwood County, South Carolina.

3. Venue is proper in this matter in the Anderson/Greenwood Division of this Court in accordance with 28 U.S.C. §1441(a).

4. Upon information and belief, the amount in controversy in this matter exceeds \$75,000.00 as, on June 16, 2022, Plaintiff denied that the “amount in controversy does not exceed the sum or value of \$75,000 exclusive of interest and costs.” This discovery response is an “other paper” and consequently, removal is timely under 28 U.S.C. §1446(b)(3), (c)(3)(A).

5. Defendant Cole BL Greenwood, SC, LLC, d/b/a Cole Real Estate Investments, LLC consents to this removal.

6. Cole BL Greenwood SC, LLC was a Delaware corporation that was merged out of existence into a Delaware limited partnership, VEREIT Real Estate, L.P., in 2017. VEREIT was merged into Realty Income Corporation, a Maryland corporation, in November 2021. Cole Real Estate Investments, LLC is a South Carolina Corporation but is believed to be an incorrect entity. The inartful pleading of Defendant Cole makes it difficult to determine which entity is the defendant because of the “d/b/a” designation. However, even if the South Carolina incorporation of Cole Real Estate Investments, LLC makes Defendant Cole a non-diverse party, removal is proper because Defendant Cole has been fraudulently joined as a sham defendant with no nexus to the case. A defendant’s

right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy. If in such a case a resident defendant is joined, the joinder, although fair upon its face, may be shown by a petition for removal to be only a sham or fraudulent device to prevent a removal; but the

showing must consist of a statement of facts rightly leading to that conclusion apart from the pleader's deductions.

Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97, 42 S. Ct. 35, 37, 66 L. Ed. 144 (1921).

7. Defendant Cole BL Greenwood, SC, LLC, d/b/a Cole Real Estate Investments, LLC is a sham defendant based on the following:.

(a) Plaintiff's Complaint alleges that her injury occurred on September 13, 2019 inside the BI-LO store at 2010 Montague Ave. Ext., Greenwood, SC 29649. This store is subject to a lease agreement pursuant to which BI-LO leased the premises from Cole BL Greenwood, SC, LLC d/b/a Cole Real Estate Investments, LLC and agreed, as Tenant, to "keep and maintain the Demised premises and appurtenances, and every part thereof, in good order and repair."

(b) Plaintiff alleges injury inside the store.

(c) The lease, inclusive of amendments, assumptions, and renewals, encompass the time of this incident.

(d) South Carolina law, which would be applied by this District Court sitting in diversity jurisdiction, provides that

when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.

Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (S.C. 1992); *see also Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 114, 512 S.E.2d 510, 519 (S.C. Ct. App. 1998).

8. Although BI-LO disputes that any hazardous condition existed and will fully litigate the issue, Plaintiff cannot sustain her claim against the landlord, Cole BL Greenwood, SC, LLC d/b/a Cole Real Estate Investments, LLC, thereby making it a sham defendant.

9. Pleadings filed with the Court of Common Pleas are filed herewith contemporaneously.

10. Defendant will furnish a copy of this Notice of Removal to the Clerk of Court for Greenwood County.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Ryan C. Holt

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ATTORNEYS FOR THE DEFENDANTS

Columbia, South Carolina
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